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6 IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, No. CR 08-00730 WHA

11 Plaintiff,

12 v.

13 IVAN CERNA, *et al.*,

14 Defendants.

**ORDER DENYING DEFENDANT
GUILLERMO HERRERA'S
MOTION TO RESCIND
DEFENDANT PALMA'S
SENTENCING CONTINUANCE
AND VACATING HEARING**

15 _____ /
16 Defendant Guillermo Herrera moves to rescind the sentencing continuance of co-
17 defendant Walter Palma. Defendant Palma's sentencing was continued "because the pre-sentence
18 interview has not occurred and therefore, a pre-sentence report has not been completed in this
19 matter" (Dkt. No. 1546). Defendant Herrera argues that defendant Palma "appears to be a
20 cooperator" and that delaying preparation of defendant Palma's pre-sentence report would deny
21 defendant Herrera access to *Brady* material. While it is true that the Ninth Circuit has held that a
22 criminal defendant has a constitutional right to examine *Brady* material contained within pre-
23 sentence reports, *Brady* does not require the creation of exculpatory evidence not yet in existence.
24 *United States v. Monroe*, 943 F.2d 1007, 1011 n.2 (9th Cir. 1991). Defendant Herrera may not

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United States District Court

For the Northern District of California

1 compel the early preparation of defendant Palma's pre-sentence report nor an earlier date for his
2 sentencing. Defendant Herrera's motion is **DENIED**. The hearing noticed for May 25, 2010, is
3 **VACATED**.

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5 **IT IS SO ORDERED.**

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7 Dated: May 6, 2010.

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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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